

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

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U.S. DISTRICT COURT, E.D.N.Y.

★ OCT 12 2005 ★

BROOKLYN OFFICE

**BARBARA SCHWAB et al., individually and
on behalf of all others similarly situated,**

Plaintiffs,

v.

PHILIP MORRIS USA, INC. et al.,

Defendants.

No. CV 04-1945 (JBW)

**MEMORANDUM AND ORDER ON
PLAINTIFFS' MOTION RE MEANING
OF "LIGHTS" DESCRIPTOR**

JACK B. WEINSTEIN, Senior District Judge:

Plaintiffs move for partial summary judgment. They seek an order that there is no genuine issue of material fact as to the following: that the defendants never intended the "light" or "lights" descriptor to refer to taste. Alternatively, plaintiffs request that the court preclude defendants from introducing evidence that the meaning of the "light" or "lights" descriptor was primarily a reference to the taste of defendants' products. Their contention is that the word "lights" was intended to convey to the smoker that "light" cigarettes were not as harmful to health as "regular" cigarettes. *See* Pls.' Mem. in Supp. (Docket No. 418) 1.

Defendants' view is that the evidence demonstrates that they intended "lights" to refer to a lighter-tasting cigarette and that many consumers understood this. *See* Defs.' Br. in Opp'n (Docket No. 583) 1-2.

Were the case to be tried, a reasonable jury could, on the present state of the evidentiary record, agree with either side's contentions. These issues are relevant to whether a fraud was committed and how to measure plaintiffs' damages, if any.

The motion is denied.

SO ORDERED.

Jack B. Weinstein

Dated: September 26, 2005
Brooklyn, New York